BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON COMPLIANCE AND ENFORCEMENT ISSUES IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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ADMINISTRATIVE LAW JUDGE RULING

MISCELLANEOUS

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Pacific Gas and Electric Company ("PG&E") respectfully submits this Response to the Administrative Law Judge's Ruling Requesting Comments on Compliance and Enforcement Issues in the Renewables Portfolio Standard ("RPS") Program filed on September 27, 2013 (the "Ruling").

I. INTRODUCTION AND SUMMARY OF COMMENTS ON PRIMARY TOPICS

PG&E appreciates the California Public Utility Commission's ("Commission") ongoing efforts to implement Senate Bill ("SB") 2 (1X),[1/] which modified the RPS Program. The current Ruling seeks comments on issues of compliance and enforcement that were not fully addressed in the Commission's three initial Decisions implementing SB 2 (1X). The Ruling also seeks comments on whether enforcement practices adopted under the prior 20% RPS Program should remain effective or be modified. Finally, the Ruling seeks comments on the implementation of

1/ Senate Bill (SB) 2 (1X) (Simitian), Stats. 2011, ch. 1.

Assembly Bill ("AB") 2187,[2/] which added a new provision to the RPS Statute that modifies the Portfolio Balance Requirements ("PBR") for Electric Service Providers ("ESPs").

PG&E provides specific responses to the questions set forth in the Ruling in Section II, below. While PG&E has set forth each of the questions from the Ruling in full in the sub-headings below, its responses to many of the questions have been grouped together in order to avoid redundancy and to address topics more comprehensively. For ease of reference, PG&E provides the following general summaries of its more detailed comments on the primary topics covered by the Ruling:

- Process for Submitting RPS Compliance Documents: The Commission should maintain its current practices and procedures with regard to reporting compliance. Requests for waivers from or reductions in RPS compliance requirements should be allowed to be submitted in in any manner that will allow the development of a clear legal and factual record supporting the Commission's action on the request and that allows adequate opportunities for notice and comment. Changes to reporting templates should continue to be made after consultation with a working group of stakeholders, with notice of the opportunity to participate in the working group provided to all members of the RPS docket service list.

- Process for Evaluating Requests to Waive or Reduce RPS Requirements: The Commission should not expend its and stakeholders' resources attempting to provide guidelines for what factual circumstances would or would not meet the statutory criteria for waivers or reductions in RPS requirements. Any such

2/ AB 2187 (Bradford), Stats. 2012, ch. 604.

process would be enormously contentious and would provide little practical benefit since any actual request for a waiver or reduction would be fact-specific. Rather, resources should remain focused on achieving RPS compliance.

- Enforcement Standards: The Commission must waive enforcement under the statute if a retail seller demonstrates the existence of any of the criteria in Section 399.15(b)(5).[3/] The Commission should ensure that substantial evidence in light of the record as a whole supports its decision on any such waiver or reduction request. If the request is denied, the Commission should issue an Order to Show Cause ("OSC") and allow the retail seller to present any evidence that mitigates or otherwise may excuse non-compliance. The Commission retains discretion under Section 2113 to consider such mitigating evidence, including factors outside of those enumerated in the statute, and to fashion appropriate remedies.

- Alternative Compliance Mechanism: The Commission has authority to employ an Alternative Compliance Mechanism ("ACM") if it is implemented in the context of the Commission's fashioning of an appropriate remedy in a contempt proceeding. A retail seller should have the ability to propose an ACM in an enforcement proceeding if it believes an ACM would be more appropriate than a penalty or other remedy given the specific circumstances of the shortfall.

- Presumptive Penalty Amounts and Cap: The Commission should retain the rebuttable presumption that a $50/MWh penalty applies in cases where penalties are an appropriate remedy for non-compliance. Similarly, no evidence suggests a

3/ This and all subsequent references to "Section" refer to the California Public Utilities Code, unless otherwise noted.

need to modify the existing $25 million cap on penalties per compliance period. Penalty amounts and the cap should apply equally to all retail sellers.

II. RESPONSES TO SPECIFIC QUESTIONS IN THE RULING

A. Section 3.1 – Compliance Reports for Final year of the Compliance Period

1. Should the annual report for the last year of a multi-year compliance period be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?

2. Should the annual report for each one-year compliance period (2021 and later years) be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?

3. Should the updated annual report for the last year of a multi-year compliance period be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?

4. Should the updated annual report for each one-year compliance period (2021 and later years) be formally filed, as well as served on the service list of the then-current RPS proceeding and provided to Energy Division staff? What benefits, if any, would filing provide? What problems, if any, would filing create?

Decision ("D.") 12-06-038 sets forth three distinct types of RPS compliance reports that retail sellers must submit to the Commission, which generally track Questions 1-4 above: (1) annual progress reports for each interim year of a multi-year compliance period; (2) an annual compliance report for the final year of a multi-year compliance period, or following a one-year compliance period after 2020; and (3) an updated compliance report for a particular compliance period once the California Energy Commission ("CEC") issues an RPS Procurement Verification Report ("Verification Report") verifying RPS procurement claims for an entire compliance

period.[4/] The Commission will be able to make a final compliance determination regarding the enforceable 33% RPS Procurement Quantity Requirements ("PQR")[5/] and Portfolio Balance Requirements ("PBR")[6/] only after the submittal of the last of these three reports, since only that report will contain the final, verified procurement data.

In the past, the Commission has not required RPS compliance reports to be formally filed, but rather has required that they be submitted to the appropriate Administrative Law Judges and Energy Division staff, with public versions of the compliance reports served on the entire service list for the then-active RPS rulemaking. To PG&E's knowledge, this system of submission has worked well, and parties have not complained of any lack of access to the public information contained in the compliance reports. In fact, the Green Power Institute ("GPI") has commented regularly on the compliance reports filed by the large Investor-Owned Utilities ("IOUs"),[7/] and both general and trade media have reported widely the progress of the large IOUs toward the RPS targets. Accordingly, PG&E sees no need to modify the system of compliance report submission that has been adopted in the past.

A requirement to formally file the compliance reports could raise technical issues and would present additional administrative burdens on the retail sellers and the CPUC docket office. For example, filed documents must either be prepared in hard copy or electronically filed; if the latter, they must meet PDF archive formatting requirements ("PDF/A") and not exceed 20

4/ D.12-06-038 at 76-77. *See also* Cal. Pub. Util. Code § 399.25(b); "Assigned Commissioner's Ruling with Final Document Addressing Process Issues Relative to RPS Compliance Report," issued November 20, 2008 in Rulemaking ("R.") 08-08-009, at Attach. A, pg. A-3, fn. 4.

5/ *See* Section 399.15.

6/ *See* Section 399.16. These are alternatively referred to as "Product Content Requirements," but for consistency, PG&E will refer to them here as PBRs.

7/ *See, e.g.,* GPI's Comments on the August 2013 RPS Compliance Reports, filed September 18, 2013 in R.11-05-005; GPI's Comments on the March 2011 RPS Compliance Reports, filed April 28, 2011 in R.11-05-005.

megabytes in size.[8/] PG&E's experience has been that conversion of complicated Excel-based files containing numerous macros and advanced formatting, like the existing RPS Compliance Report template and accompanying Project Development Status Report ("PDSR"), are difficult to convert successfully to PDF/A standards and can be extremely large in terms of file size. Accordingly, if formal filing were to be required, PG&E expects that parties may find they have to file documents in paper. This would involve presenting four copies of each version of these voluminous documents to the docket office, which would then presumably have to create electronic versions of the documents for purposes of online access to the docket.

One benefit of formal filing would be the ability to ensure that a public version of the final, verified compliance report for each compliance period would be available indefinitely to the public. This same goal can be achieved without requiring filing by permanently archiving the public versions of all final, verified compliance reports for each compliance period on the Commission's RPS Program homepage, as the Commission has done for the 33% Preliminary Annual Compliance Reports and the 20% RPS Closing Reports.[9/]

PG&E also reiterates its earlier recommendation in this proceeding that the Commission streamline the compliance reporting process by setting the Verified RPS Compliance Report due date to be the later of 30 days after the effective date of the CEC's Final Verification Report or the normal due date for the annual RPS Compliance Report. In this way, the Verified Compliance Report for a compliance period and the most current annual RPS Compliance Report can be combined and filed more efficiently in a single document. This rule also allows for an exception where the CEC has not issued its Verification Report for the compliance period at least 30 days before the normal due date for the annual RPS compliance report, in which case

8/ CPUC Rule 1.13.

9/ *See* http://www.cpuc.ca.gov/PUC/energy/Renewables/ (visited on October10, 2013).

retail sellers should be required to file their Verified RPS Compliance Reports 30 days after the Verification Report eventually issues.

5. Should parties to the then-current RPS proceeding be allowed to comment on the annual report for the last year of a compliance period? Why or why not?

6. Should parties to the then-current RPS proceeding be allowed to comment on the annual report for any year of a compliance period? Why or why not?

PG&E has no objection to parties commenting on any RPS compliance report submitted in this proceeding. However, any necessary enforcement of the RPS procurement requirements should only be initiated through a formal Order to Show Cause ("OSC") issued by the Commission pursuant to its authority under Sections 399.15(b)(8) and 2113, with adequate opportunity for the impacted retail seller to respond and defend itself, including through the presentation of additional information that may justify or mitigate the compliance shortfall.

B. Section 3.2 – Waiver of Portfolio Quantity Requirement

1. The statute provides that the Commission "shall waive enforcement of this section if it finds that the retail seller has demonstrated any of [the listed] conditions. . ." (emphasis added.)

   - Does the Commission have discretion to waive enforcement of the procurement quantity requirement (PQR) for any conditions that are not listed in Section 399.15(b) (5)? Why or why not?

   - If the Commission does have such discretion, for what additional conditions may it exercise its discretion to waive enforcement of the PQR? Please provide rationales that address both legal and practical implementation perspectives.

Sections 399.15(b)(5)-(7) provide a statutory mandate that the Commission waive enforcement if the Commission finds that a retail seller has taken all reasonable actions under its control to achieve full compliance, which demonstration can be achieved through a showing that the retail seller has met the factors described in Section 399.15(b)(5). Conversely, the

Commission is directed to not waive enforcement proceedings if a retail seller fails to demonstrate its eligibility for a waiver under the factors described in Section 399.15(b)(5).[10/]

However, these statutory mandates must be read in conjunction with the further language in Section 399.15(b)(8), which requires the Commission to "exercise its authority pursuant to Section 2113" in the event a retail seller has a shortfall that it has failed to demonstrate should be waived under the Section 399.15(b)(5) factors. Section 2113 provides that failures to comply with Commission requirements are "punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record." Traditionally, the Commission has determined whether to hold parties in contempt under Section 2113 after issuing an OSC and taking evidence that may mitigate or justify the alleged non-compliant behavior. In the RPS context specifically, the Commission has concluded that while it is not required to issue an OSC in order to apply penalties for RPS non-compliance, it does have discretion to do so.[11/] Thus, nothing in the RPS statute limits the Commission's discretion in an enforcement proceeding initiated pursuant to Section 2113 to consider evidence outside of the factors described in Section 399.15(b)(5) when fashioning an appropriate remedy for RPS non-compliance.

Additionally, the Commission must harmonize the enforcement provisions in Sections 399.15(b)(5-8) with the procurement expenditure limitation ("PEL") provisions in Sections 399.15(c)-(f). Specifically, Section 399.15(f) allows an electrical corporation to refrain from procuring additional RPS-eligible resources under certain conditions. This provision must be read to provide an additional ground to waive enforcement of the RPS procurement requirements

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10/ *See* Section 399.15(b)(7).

11/ *See, e.g.,* D.03-12-065 at 10 ("[T]he Commission is not precluded from issuing an OSC even if it does establish an upfront compliance procedure utilizing pre-determined penalties . . . .").

to the extent that an IOU meets the cost cap and is subsequently unable to achieve the statutory procurement targets.

2. Should the Commission specify now how it will interpret certain key terms in the statutory requirements (e.g., "all reasonable operational measures," in Section 399.15(b) (A) (ii); or "prudently managed portfolio risks," in Section 399.15(b) (B) (i))? Should the Commission make its interpretation only in the context of a waiver request made by a retail seller? Why or why not?

   - If the Commission should specify its interpretation of key terms now, what terms should be included? Please provide a proposed interpretation for each such term.

   - If the Commission should wait to interpret key terms, should the Commission provide any guidance in the interim to retail sellers about the grounds for waiver? If yes, please propose the form such guidance should take.

The Commission should apply the standards and factors set forth in Section 399.15(b)(5) only in the context of a waiver request, if any, actually made by a retail seller. This will help to keep the focus of RPS implementation on achieving the State's RPS goals, rather than wasting significant Commission and party time and resources debating hypothetical non-compliance scenarios. The current implementation decision should address only the procedural issues related to seeking a waiver, rather than attempting to define the substantive benchmarks that will apply.

The substantive standards that the Commission must use in determining whether to grant such a waiver are provided by Section 399.15(b)(5) and should be applied, if necessary, to specific facts when an application for waiver is made. The Commission has already found that the standards set forth in Section 399.15(b) (5) are "reasonably detailed," and thus has focused on the procedural question of when a waiver may be made.[12/] Any attempt to further interpret

12/ D.12-06-038 at 79.

the substantive criteria in the absence of concrete facts will result in an inefficient use of Commission and party resources since a fact-specific adjudication would need to occur in any case.

3. How should a retail seller's waiver request be submitted?

- Filed and served, at the same time as its annual compliance report for the last year in a compliance period is filed and served; Filed and served, at the same time as its annual compliance report for the last year in a compliance period is submitted to Energy Division and served;
- Submitted to Energy Division and served, at the same time as its annual compliance report for the last year in a compliance period is filed and served;
- Submitted to Energy Division and served, at the same time as its annual compliance report for the last year in a compliance period is submitted to Energy Division and served;
- Filed and served as a separate motion or application at the same time as its annual compliance report for the last year in a compliance period is filed and served (or submitted to Energy Division and served, as the case may be);
- Some other method.

Please provide rationales for your choice that address both legal and practical implementation perspectives. Please specifically discuss the implications of your choices for the development of a record on which the Commission could reasonably grant or deny a requested waiver.

A retail seller should be allowed to submit a request for a waiver of RPS procurement quantity requirements or a reduction in the PBR in any manner that will allow the development of a clear legal and factual record supporting the Commission's action on the request and that allows adequate opportunities for public notice and comment. A motion made in the then-current RPS rulemaking docket, filed and served on all parties to the proceeding, should serve this purpose so long as it is accompanied by all necessary supporting evidence. A Tier 3 advice letter, petition, or application could serve the same purpose if a Commission rulemaking to

implement the RPS Program is not open at the time.

CPUC rules provide opportunities for other parties to respond on the record to a filed motion.[13/] Additionally, parties could conduct discovery related to the motion[14/] or request hearings related to the motion. PG&E would expect that a motion for waiver of RPS requirements would be resolved by a Presiding Officer's decision or a Decision of the full Commission.

A request for a waiver or reduction in RPS requirements should be made no later than at the same time that a retail seller submits its verified compliance report for a particular compliance period. Until procurement is verified by the CEC, a retail seller's final compliance position will not be known. A retail seller should have the discretion, but not the obligation, to submit the request for a waiver at the same time as it submits its preliminary compliance report for a compliance period, but should also have the ability to update or modify the request based upon the results of the CEC's subsequent verification.

4. Should comment by parties to the then-current RPS proceeding be allowed on requests for waivers? Why or why not? If comments should be allowed, at what point should they be made?

Comments by parties on waiver requests should be allowed according to the form and timing providing in the Commission's Rules of Practice and Procedure. Any such comments would allow the Commission to develop a record to support the resulting decision.

5. What minimum amount and type of information, if any, should be included in the waiver request? For example, should the retail seller be required to specify the condition(s) in Section 399.15(b) (5) on which it relies? Please explain the basis for the information specified.

Because it is the statutory responsibility of a retail seller seeking a waiver to demonstrate

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13/ CPUC Rule 11.1(e).

14/ CPUC Rule 10.1.

it has met the requirements of Section 399.15(b)(5) to be eligible for a waiver, the retail seller should have the discretion to present its case in whatever form it believes is most efficient and useful to the Commission in evaluating its request. Requiring a certain form or content could limit the retail seller's ability to present its defense to potential enforcement, and thus could deprive the retail seller of adequate due process of law.

6. What kind of showing should the Commission require in order for a retail seller to "demonstrate that any of the [listed] conditions are beyond the control" of the retail seller?

7. Should a retail seller be required to make a separate showing that one or more of the listed conditions prevented its compliance with its PQR? If yes, what kind of showing should the Commission require?

The Commission's decision regarding whether a retail seller has demonstrated (1) the existence of any factor described in Section 399.15(b)(5) and (2) that the factor is beyond the control of the retail seller should be based upon substantial evidence in light of the record as a whole. This standard mirrors well-established administrative procedure requirements and is appropriate for Commission decision-making.

8. Must any required showings for a waiver be made through evidentiary hearings? Why or why not?

Because the statutory factors allowing for a waiver are inherently factual in nature, PG&E believes that an evidentiary record will generally be necessary in order for the Commission to decide on any such request. That record may, but need not, be developed through evidentiary hearings. The Commission and parties may also choose to develop the record through written testimony and may reasonably determine that evidentiary hearings are unnecessary to resolve factual disputes.

9. If such showings may be made without evidentiary hearings, what format should the Commission require?

See PG&E's response to Question 3, above. In general, the record supporting a decision

regarding a waiver request may be developed through written testimony, briefing, discovery, and hearings. The Commission need not require any particular form of evidentiary support, but rather should tailor the process to the scope and basis of any such waiver request.

10. Should the Commission require a retail seller to apply all available excess procurement to the compliance period at issue prior to seeking a waiver of PQR?

It is reasonable to require retail sellers to retire all available RPS-eligible products in the retail seller's possession that can contribute to meeting a PQR for a particular compliance period prior to seeking a waiver of the PQR for that compliance period. However, this should not extend to requiring retail sellers to procure additional RPS-eligible products in the market prior to seeking a waiver or to requiring retail sellers to retire products (e.g., Product Content Category ("PCC") 3 products) that cannot be applied to the PQR in a given compliance period due to product content restrictions.

C. Section 3.3 – Reduction of Procurement Content Requirement

1. How should a retail seller's request for reduction of its procurement content requirement be submitted?

- Filed and served, at the same time as its annual compliance report for the last year in a compliance period is filed and served;
- Filed and served, at the same time as its annual compliance report for the last year in a compliance period is submitted to Energy Division and served;
- Submitted to Energy Division and served, at the same time as its annual compliance report for the last year in a compliance period is filed and served;
- Submitted to Energy Division and served, at the same time as its annual compliance report for the last year in a compliance period is submitted to Energy Division and served;

- Filed and served as a separate motion or application at the same time as its annual compliance report for the last year in a compliance period is filed and served (or submitted to Energy Division and served, as the case may be);

- Some other method.

Please provide rationales for your choice that address both legal and practical implementation perspectives. Please specifically discuss the implications of your choices for the development of a record on which the Commission could reasonably grant or deny a requested waiver.

A reduction in the PBRs pursuant to Section 399.16(e) should be made in the same manner as described with regard to a request for a waiver of the PQR in PG&E's response to Question 2 of Section 3.2 of the Ruling, above. Further, a retail seller should have the option, but not the obligation, to seek both a PQR waiver and a PBR reduction in the same filing.

2. Should comment by parties to the then-current RPS proceeding be allowed on requests for reduction of procurement content requirements? Why or why not? If comments should be allowed, at what point should they be made?

As also described in the response to Section 3.2, above, comments on requests for reduction in the PQRs should be allowed, with the form and timing dictated by the Commission's Rules of Practice and Procedure.

3. Section 399.16(c) sets out minimum and maximum procurement percentages for resources defined in Section 399.16(b) (1) ("Category 1" resources) and Section 399.16(b) (3) ("Category 3" resources). Does the Commission's discretion to grant a reduction apply exclusively to obligations under Category 1 resources? Why or why not?

Section 399.16(e) provides that the Commission "may reduce a procurement content requirement of [Section 399.16(c)]" to the extent a retail seller demonstrates that it is eligible under the Section 399.15(b)(5) factors. The Commission can, and should, reasonably interpret "reduce" in this context to refer to the stringency of the requirements set forth in Section 399.16(c). Thus, while Section 399.16(c)(2) sets forth a maximum procurement limitation for

PCC 3 products, Section 399.16(e) allows the Commission to reduce the stringency of this limitation by allowing a qualifying retail seller to use PCC 3 products for purposes of compliance in excess of the statutory limit. Similarly, the Commission has the ability to reduce the stringency of the PCC 1 requirement in Section 399.16(c)(1) by reducing a retail seller's minimum PCC 1 procurement requirement.

This statutory construction is reasonable because if the Legislature had intended that the Commission could only modify the requirements in Section 399.16(c)(1), it would have specified that subsection instead of more generally stating that the Commission can alter the requirements in "subdivision (c)."

4. Section 399.16(e) requires a retail seller seeking a reduction to meet the requirements of Section 399.15(b) (5). Should the Commission apply the same rules and procedures it develops for waivers of PQR under Section 399.15(b) (5) to determining requests for a reduction in a procurement content requirement? Why or why not?

5. If the Commission should not apply the same rules and procedures, what rules and procedures should the Commission institute for requests for reductions of procurement content requirements? Please provide rationales that address both legal and practical implementation perspectives.

The Commission should apply the same rules and procedures it develops for waivers of PQR under Section 399.15(b)(5) to determining requests for a reduction in a procurement content requirement. The Legislature incorporated the same standard for the granting of a request for a reduction in PBRs as for waivers of the PQR by referencing the Section 399.15(b)(5) factors specifically in Section 399.16(e). Thus, the substantive and procedural standards adopted by the Commission to evaluate either a waiver request or a reduction request should be the same.

6. Does the grant of a reduction in a procurement content requirement also reduce the retail seller's PQR for the compliance period? Why or why not?

The Commission has determined that the PQRs and the PBRs are separate.[15/] Accordingly, while a decision by the Commission that a retail seller has met the criteria for a reduction in the PBRs means that the retail seller is also eligible for a waiver of the PQR in the same compliance period, the retail seller has the discretion to seek either a PQR waiver, a reduction in the PBRs, or both.

A retail seller may not need a waiver of the PQR if its total retirement of RPS-eligible products is greater than its PQR requirement, even though those products do not comply with the PBRs. It is important to note that the Commission need not treat these separate requirements as holding the same importance, nor do they require the same remedies in the event of noncompliance. The overarching and primary goal of the RPS program is to attain certain increasing percentages of RPS-eligible deliveries by 2013 and 2020.[16/] For this reason, the statute specifically requires that the Commission remedy an unexcused failure by a retail seller to meet the PQR through imposition of the Commission's contempt authority, which can include both injunctive remedies and, if warranted, penalties.[17/] The PBRs are a secondary goal of the program, intended to focus retail sellers' procurement on certain sub-types of RPS-eligible products that are deemed least-cost and best-fit.[18/] The Legislature did not specify any specific

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15/ D.11-12-052 at 12 (The "determination by the Commission of conformity with criteria for a specific RPS portfolio content category is different from the Commission's enforcement of the overall RPS procurement quantity requirements."); D.12-06-038 at 58 ("[A] shortfall in meeting the portfolio balance requirement for procurement meeting the criteria of Section 399.16(b)(1) is a failure to comply with an RPS compliance obligation, subject to enforcement action, but that such a shortfall should be determined independent of any failure to meet the procurement quantity requirement set by D.11-12-020.")

16/ *See* Section 399.11(a).

17/ *See* 399.15(b)(8).

18/ *See* 399.16(b)-(c).

remedy for an unexcused failure to meet the PBRs, as it did for the PQR, leaving the Commission substantial discretion on whether and how to remedy any portfolio imbalance.

7. If the Commission were to grant a reduction of a retail seller's Category 1 obligation, does the Commission have the authority to impose a requirement that the retail seller must make up the amount of the reduction through procurement of Category 2 (Section 399.16(b)(2)) or Category 3 (Section 399.16(b)(3)) resources? Why or why not?

8. If the Commission has the authority to require a retail seller to make up the amount of any reduction, under what circumstances should the Commission require a retail seller to do so? Please provide rationales that address both legal and practical implementation perspectives.

As noted in the last subsection, the Commission has decided to treat the PQR and PBRs as separate requirements. Thus, if a retail seller applied for and was granted a reduction in the PBRs, but did not seek a waiver as to the PQR, the Commission should accept additional quantities of PCC 2 or PCC 3 products to meet the PQR. As a practical matter, however, the retail seller would also be eligible for a waiver of enforcement of the PQR if it qualified for a reduction in the PBRs. If the retail seller sought and was granted that waiver, the Commission should not require additional PCC 2 and PCC 3 procurement to meet the PQR. It must, however, establish additional reporting requirements on the retail seller to ensure that the retail seller takes all reasonable actions under its control to satisfy future procurement requirements.[19/]

9. Should the Commission require a retail seller to apply all available excess procurement in the relevant portfolio content category to the compliance period at issue, prior to seeking a reduction in a category requirement?

It is reasonable to require a retail seller to retire for compliance all available PCC 1 excess procurement in the retail seller's portfolio prior to granting a reduction in the Section 399.16(c)(1) minimum PCC 1 requirement. This should not extend to requiring the retail seller to procure additional quantities of PCC 1 products in the market.

19/ Section 399.15(b)(6).

Retirement of banked PCC 2 and PCC 3 products would only exacerbate a portfolio imbalance and so should not be required as a precondition to granting a request to reduce the stringency of the statutory cap on the use of these products.

D. Section 3.4 – Prior Deficits

1. Is it possible for a retail seller that is required to make up a prior deficit to request a waiver of enforcement for the amount of the deficit? Why or why not?

2. If it is possible for a retail seller to request waiver of enforcement on its prior deficit, what conditions would support such a request?

3. If it is not possible for a retail seller to request waiver of enforcement on its prior deficit, what process, if any, should be available to deal with a prior deficit that is not made up by the end of 2013?

4. If a prior deficit is not made up by the end of 2013 and enforcement is not waived, should any remaining prior deficit be subject to the same penalty provisions as failures to meet the procurement quantity requirements for the 2011-2013 compliance period?[20/]

PG&E understands these questions to refer to "prior deficits" that retail sellers may have carried forward from the 20% RPS Program that was in place prior to 2011. PG&E generally supports applying the same procedural and substantive rules to any necessary RPS enforcement proceedings and to all load-serving entities ("LSEs"). Accordingly, PG&E supports applying the same procedures described above to failures to procure adequate quantities to make up any carried-over deficits from the 20% RPS Program.

E. Section 3.5 – AB 2187

1. In implementing this provision with respect to the portfolio balance requirements set out in Section 399.16(c) and implemented in D.12-06-038, should the Commission do anything more than ensure that the changed date (January 13, 2011 rather than June 1, 2010) is applied to the contracts of ESPs? If the Commission should do more, please specify the additional actions the Commission should take.

20/ See Sec. 3.6, below, on penalties.

2. Should the Commission interpret the change of date from June 1, 2010 to January 13, 2011, that is made to Section399.16(c), as also applying to Section 399.16(d), where exemptions to the new portfolio content category rules based on the date of contract execution are also stated?

3. If the Commission should interpret the difference between the two sections as requiring the use of different dates for the execution of ESPs' contracts for different RPS compliance processes (portfolio balance requirements versus count in full provision), how should the Commission implement the differing requirements? Please provide rationales that address both legal and practical implementation perspectives.

AB 2187 inserted Section 399.16(c)(4) into the RPS statute. That subsection applies only to Electric Service Providers ("ESPs") and provides that for purposes of determining compliance with the PBRs set forth in Section 399.16(c), ESPs' contracts will be counted if they were executed after January 13, 2011, rather than June 1, 2010 as for all other retail sellers. AB 2187 *did not* amend the date in Section 399.16(d) that determines which contracts shall "count in full" for purposes of RPS compliance. This is often referred to as the "grandfathering date." The Commission previously determined that if a contract is grandfathered under Section 399.16(d), it is not counted in the calculation of the PBRs. However, a grandfathered contract also is not subject to the limitations on banking of excess procurement and on the use of short-term contracts.[21/] Thus, the grandfathering eligibility set forth in Section 399.16(d) is distinct from, and has independent significance, from the date used for purposes of determining compliance with the PBRs in Section 399.16(c).[22/] Because the Legislature modified only Section 399.16(c), and did not change the requirements of Section 399.16(d), the Commission should interpret the statute as exempting ESP contracts signed between June 1, 2010 and January 13, 2011 from the PBR calculation, but not from any other RPS requirement.

21/ *See* D.12-06-038 at 30-32.

22/ *Id.* at 30 ("[T]he application of Section 399.16(d) must extend further than the portfolio content categories.").

F. Section 3.6.1 – Penalties Amount

1. Should the prior concept of an "upfront" penalty (i.e., a penalty that is to be presumptively imposed) be retained?[23/] Why or why not?

2. Should the penalty amount for failure to meet RPS procurement requirements be kept at $50/MWh for each MWh (i.e., REC) that the retail seller is below its PQR for the compliance period? Please provide rationales that address both legal and practical implementation perspectives.

3. If the Commission should set a different dollars-per-REC penalty amount, please provide a sample calculation and comparison of the proposed new amount to the $50/REC figure.

4. Should the dollars-per-REC penalty vary for different compliance periods?

   - Should the dollars-per-REC penalty vary according to the length of the compliance period?

   - Should the dollars-per-REC penalty be set for the first compliance period, with an escalation factor in subsequent compliance periods? If yes, please provide a sample calculation.

   Please provide rationales that address both legal and practical implementation perspectives.

The existing penalty amount and cap have been in place since 2003 and have proved to be effective at incentivizing compliance with the RPS requirements. As is noted by the Commission in its March 2013 Renewables Portfolio Standard Quarterly Report for the 3rd and 4th Quarter 2012, California is on track to meet its interim requirement of 25% renewables by 2016, and is well-positioned to meet 33% by 2020.[24/] Accordingly, PG&E does not object to the retention of a rebuttable presumption that a $50/MWh penalty amount should apply to retail sellers that fail to meet their RPS compliance obligations, as well as the penalty cap of $25

23/ See D.03-12-065 at 8-16; OP 1.

24/ California Public Utilities Commission, Renewables Portfolio Standard Quarterly Report for the 3rd and 4th Quarter 2012, March 2013, p. 4 (available at http://www.cpuc.ca.gov/NR/rdonlyres/4F902F57-78BA-4A5F-BDFA-C9CAF48A2500/0/2012_Q3_Q4RPSReportFINAL.pdf)

million for retail sellers who fail to meet their RPS procurement obligations in a given compliance period.[25/] PG&E finds no cause for revisiting the penalty amount or penalty cap at this time.

The historical record of California's RPS over the last ten years demonstrates that the Commission's enforcement policies have been effective at aggressively increasing renewables procurement. In addition to California, a number of other states with renewables portfolio standards adopted an RPS penalty amount of approximately $50/MWh, including Washington[26/] Connecticut[27/] and Texas[28/]. In addition, New Jersey[29/] has imposed Alternative Compliance Mechanism ("ACM") in lieu of a penalty equal to $50/MWh.

Because the cost of renewables procurement is not tied directly to general inflation over time, but rather varies considerably depending on many market-based factors, the Commission should not adopt a pre-set formula for varying the presumptive penalty amount over different compliance periods. As discussed above, the existing $50/MWh presumptive penalty amount has proved to provide an appropriate incentive for compliance and should remain in place.

25/ *See generally* D.03-06-071 as modified by D.03-12-065.

26/ *See* Wash. Admin. Code Section 480-109-050 (adopting $50/MWh in $2007) (available at http://apps.leg.wa.gov/WAC/default.aspx?cite=480-109-050)

27/ Database of State Incentives for Renewables & Efficiency, US Department of Energy. (available at http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=CT04R) (noting that as of July 2013, Connecticut required payment of $55/MWh to a fund in the event of noncompliance).

28/ Database of State Incentives for Renewables & Efficiency, US Department of Energy. (available at http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=TX03R) (noting that as of March 2013, Texas required payment of $50/MWh as an administrative penalty in the event of noncompliance).

29/ Database of State Incentives for Renewables & Efficiency, US Department of Energy. (available at http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=NJ05R) (noting the use as of March 2013 of a general Alternative Compliance Payment under state regulations equal to $50/MWh)

5. Should the dollars-per-REC penalty amount vary based on a retail seller's total retail sales? Why or why not?

6. If the Commission should set a dollars-per-REC penalty amount that varies based on a retail seller's total retail sales, how should the variable penalty amount be determined? Please provide sample calculations that fully illustrate the proposal.

In order to ensure a level playing field among all entities, the same penalty amount must be applicable to all retail sellers. Only by ensuring that the same compliance requirements are applied to all RPS-obligated load-serving entities can the CPUC enable the development of a broad and liquid market for RPS-eligible products that can continue to develop and provide the most cost-effective renewable power.

7. Should the Commission retain the requirement that a retail seller include a calculation of the presumptive penalty with its compliance report for a compliance period, if the compliance report shows a shortfall? Why or why not?

8. If the Commission should not retain this requirement, at what point in the compliance or enforcement process should a retail seller's potential penalty liability be calculated?

PG&E believes it would be premature for retail sellers to provide calculations of the presumptive penalty in annual compliance reports within multi-year compliance periods, as these reports only forecast compliance and do not definitively establish a compliance position. Instead, penalty calculations should only be included in the final compliance report for a compliance period so that the calculation accurately reflects all procurement for that period. For example, there could be a case where a retail seller may face an expected shortfall, but is waiting on Commission approval for executed contracts that, if approved, would be eligible for that compliance period and could make up the shortfall gap. A retail seller should be given a full opportunity to comply with the RPS requirement of a specific compliance period before reporting a penalty calculation.

G. Section 3.6.2. – Penalty Cap

1. Should the Commission adjust the same penalty cap to conform to the multi-year compliance periods, as implemented in D.11-12-020? That is, should the Commission institute a penalty cap of $75 million for the 2011-2013 compliance period and the 2014-2016 compliance period; a penalty cap of $100 million for the 2017-2020 compliance period; and a penalty cap of $25 million for each annual compliance period in 2021 and later years?

2. Should the amount of the penalty cap be changed? Why or why not? Please provide rationales that address both legal and practical implementation perspectives.

3. If the Commission should set a different penalty cap, please provide a sample calculation and comparison of the proposed new cap to the $25 million/year figure.

4. Should the penalty cap vary for different compliance periods, beyond the arithmetic difference created by the differing lengths of the compliance periods? Please provide rationales that address both legal and practical implementation perspectives.

5. If the Commission should vary the penalty cap for different compliance periods, how should the cap vary? Please provide a sample calculation.

The Commission established the penalty cap in D.03-06-071 (as modified by D.03-12-065) in order to set a maximum amount that any retail seller would be required to pay in penalties for shortfalls in meeting the Annual Procurement Targets ("APT") then in effect. In those Decisions, the Commission found that $25 million was a reasonable limit on the penalties that can be assessed against a retail seller for non-compliance in any given enforceable RPS compliance demonstration. In other words, the Commission determined that a greater potential penalty would produce more harm and financial exposure to retail sellers and their customers than it would produce benefit from additional incentives to comply. The Commission need not and should not revisit this determination.

The maximum penalty set in D.03-06-071, as modified by D.03-012-065, continues to provide adequate incentive to comply under the multi-year compliance period through 2020.

First, no evidence in the record of the Commission's RPS implementation proceedings suggests that the maximum $25 million per compliance period penalty is an insufficient deterrent against non-compliance or supports a need to increase the maximum penalty amount to as much as $100 million. Second, the statute does not support assessing penalties on an annual basis during multi-year compliance periods. As the Commission notes in this Ruling, SB 2 (1X) retained the annual RPS reporting requirement, but changes the compliance period to a multi-year period for the years prior to 2021. Since a retail seller's compliance is calculated by compliance period rather than on an annual basis, there is no foundation for a proposal to assess a penalty cap on an annual basis. Finally, any enforcement, including the assessment of any penalty, would only occur at the close of each compliance period. Even if a compliance period is spread over a number of years, the retail seller would presumably be required to pay any such penalty in a lump sum following the conclusion of enforcement proceedings, and would be unable to spread the penalties incurred over each of the years of the compliance period.

Given the lack of statutory support for an annual penalty calculation, and in the absence of any other compelling evidence that increases in potential penalties are needed, the Commission should promote regulatory and market certainty by maintaining its prior adoption of a $25 million limit on penalties resulting from enforcement in any given RPS compliance period.

6. Should the penalty cap vary based on the total retail sales of each retail seller? Why or why not?

7. If the Commission should set a penalty cap that varies based on a retail seller's total retail sales, how should the penalty cap amount be determined? Please provide rationales that address both legal and practical implementation perspectives. Please include a detailed methodology and sample calculation.

In order to ensure a level playing field among all entities, the same penalty cap must be applicable to all retail sellers. Only by ensuring that the same compliance requirements are

applied to all RPS-obligated load-serving entities can the CPUC enable the development of a broad and liquid market for RPS-eligible products that can continue to develop and provide the most cost-effective renewable power.

H. Section 3.6.3. – Penalties for Shortfalls in Procurement Quantity Requirement and Portfolio Balance Requirement

1. Should the dollars-per-REC penalty amount be the same for failure to comply with either the PQR or the PBR? Why or why not?

2. If the Commission should set different penalty amounts for the two types of shortfalls, how should the penalty amount be determined? Please provide a sample calculation. Please provide rationales that address both legal and practical implementation perspectives.

3. Should the penalty cap for failure to comply with the PQR be the same as the penalty cap for failure to comply with the PBR? Why or why not?

4. If the Commission should set different penalty caps for the two types of shortfalls, how should the penalty caps be determined? Please provide a sample calculation. Please provide rationales that address both legal and practical implementation perspectives.

5. If a retail seller both fails to attain its PQR and does not comply with the PBR in the same compliance period, should the Commission assess a penalty for each shortfall? For PQR but not PBR? Please provide rationales that address both legal and practical implementation perspectives.

SB 2 (1X), as implemented by the Commission in D.12-06-038, requires retail sellers to balance their portfolios by complying with minimum and maximum quantities of procurement meeting the criteria of particular PCCs for each compliance period. These PBRs are meant to facilitate least-cost, best-fit procurement practices. The Commission has previously determined that compliance with the PBRs should be assessed independently of a retail seller's compliance with the overall PQRs.[30/] However, the PBRs are a secondary goal of the program, and as a

30/ D.11-12-052 at p. 12 (The "determination by the Commission of conformity with criteria for a specific RPS portfolio content category is different from the Commission's enforcement of the overall RPS procurement quantity requirements.").

result, are not of the same importance as the PQR, nor do they require the same remedies in the event of noncompliance.

While SB 2 (1X) contains specific enforcement provisions with respect to the PQR, the statue does not specify the appropriate process or remedy for an unexcused failure to meet the PBRs. The lack of specific statutory direction on enforcement of the PBRs both underscores the secondary nature of these requirements relative to the PQR and also leaves substantial discretion to the Commission regarding whether and how to remedy any portfolio imbalance.

Any failure to comply with the PBRs should be assessed, and an appropriate remedy fashioned, on a case-specific basis. If the Commission were to determine that a failure to meet the PBRs were so egregious and willful as to require the assessment of penalties, any such penalties should be subject to the cumulative $25 million cap per compliance period and $50/MWh limits already established and discussed above. Additionally, where the same facts or actions give rise to non-compliance with both the PQR and the PBRs, the Commission should not double the penalty. Rather, the Commission should harmonize its enforcement of the separate RPS requirements and fashion remedies that are appropriate based upon the extent to which the non-compliance events are driven by the same facts.

I. Section 3.7. – Alternative Compliance Mechanisms

1. Does the Commission have the authority to use any alternative compliance mechanism as part of its administration of the RPS program? Please specify the legal sources on which your response relies.

2. If the Commission does have the authority to use an alternative compliance mechanism, should the Commission do so? Why or why not? Please provide rationales that address both legal and practical implementation perspectives.

3. If the Commission should implement an alternative compliance mechanism for California's RPS program, what form should such a mechanism have? Please be specific, and include sample calculations if

relevant. Please also discuss whether IOUs could or should recover any alternative compliance costs from ratepayers.

If implemented correctly, the Commission has legal authority to employ an ACM in the RPS program under its general authority to impose appropriate remedies under Section 2113 and under its general regulatory, ratemaking, and oversight authority with respect to public utilities.[31/] PG&E supports the Commission's examination of the option to incorporate an ACM into the RPS program and believes that use of an ACM could be appropriate under certain circumstances. However, further discussion is required regarding how an ACM would interact with other existing components of the RPS Program (*e.g.*, the PEL, currently under development) and the existing enforcement regime. PG&E offers preliminary comments below on how an ACM may function, and looks forward to reviewing and responding to other parties' comments on this topic.

ACMs are usually applied in lieu of RPS penalty programs. Under a typical ACM, retail sellers would make up RPS procurement shortfalls by paying a set dollar-per-megawatt hour fee into an ACM fund. The fee would remove or reduce the retail seller's compliance shortfall for a given compliance period. As a result, a penalty or other remedy for non-compliance would not be necessary for that portion of the shortfall met by the ACM fees. The ACM funds could be used under the Commission's direction to support the State's renewable energy or broader greenhouse gas reduction goals.

Because any ACM should be reserved for circumstances in which a retail seller has made good faith efforts to achieve its RPS requirements through standard procurement practices, but has been prevented from doing so at least in part by factors outside of its direct control, the Commission may choose to design an ACM so that it is only available after the end of a

31/ *See, e.g.* Section 701.

compliance period rather than as an alternative to standard procurement during a compliance period. As a practical matter, a retail seller should first have the option of submitting a request for a waiver of any enforcement for a shortfall pursuant to the Section 399.15(b)(5) factors or the PEL, if triggered. Only if that request is denied in whole or in part should the Commission initiate an enforcement proceeding to determine what remedies are appropriate to address the compliance shortfall. Under the Commission's contempt authority in Section 2113, those remedies may include various types of injunctive relief, including adopting a retail seller's proposal to reduce or eliminate a procurement shortfall through an ACM that is appropriate given the circumstances. For example, an ACM may be an appropriate remedy for non-compliance where the Commission finds that factors outside the direct control of a retail seller, or other mitigating factors, prevented the retail seller's ability to achieve compliance despite reasonable efforts to do so. The Commission would have already found these factors to be insufficient to demonstrate the eligibility for a statutory waiver under Section 399.15(b)(5), but the factors may nonetheless support a finding that penalties would be inappropriate and counter-productive in light of the statutory goals.

At this point in implementation of the RPS statute, PG&E believes it is adequate for the Commission to simply recognize the availability of an ACM as one tool among several it could use in RPS enforcement. As with the Section 399.15(b)(5) factors, PG&E does not recommend attempting to define exactly whether or how an ACM would be applied in hypothetical non-compliance situations, since the outcomes will be necessarily fact-specific and will provide little practical guidance while consuming significant Commission and stakeholder resources. This would distract parties from the primary RPS goal of achieving the targets through standard procurement practices.

J. Section 3.8. – RPS Citation Program

1. Is the citation program established by Res. E-4257 an appropriate basis for a new citation program? Why or why not?

2. If it is not appropriate to carry forward the program in Res. E-4257, would one of the other citation programs established by the Commission be a more appropriate basis? Why? Please provide rationales that address both legal and practical implementation perspectives.

3. Which infractions should be subject to fines pursuant to an RPS citation program (e.g. accuracy of RPS compliance reports, failure to timely provide required documentation in RPS compliance report, failure to timely file RPS compliance report, failure to timely file RPS procurement plan, etc.)? Please list and explain the reasons for including each type of infraction in a revised RPS citation program.

4. What monetary amount would be an appropriate fine for the infractions proposed in response to question 3?

5. Should the fines vary by type of infraction? Please explain the specific variations, if any, that should be included. Please provide rationales that address both legal and practical implementation perspectives.

6. Should fines vary based on the number of occurrences? Explain why or why not.

7. Are there any additional elements that should be included in a revised RPS citation program? Please provide rationales that address both legal and practical implementation perspectives.

PG&E supports the use of the current citation program established in Res. E-4257 moving forward, and sees no reason for the creation of a separate citation program to reflect the changes implemented to the RPS program mandated by SB 2 (1X). PG&E supports the Commission's efforts to empower the CPUC staff to cite and penalize an LSE for any failure to provide RPS information requested by the staff, as the incorporation of a ten business day period for retail sellers to correct errors or omissions in Res. E-4257 ensures that retail sellers have the opportunity to remedy errors without penalty. The implementation of the new legislation does not in itself present a reason to update the RPS citation program. The record of IOU compliance with RPS reporting and planning requirements over the past ten years strongly suggests that a

citation program is not needed to ensure those entities' compliance with such requirements. While PG&E does not object to the continuation of the current citation program, no evidence suggests a need to revise or expand the program.

K. Section 3.9.1. – Compliance Spreadsheet Adjustments

1. Should any necessary changes to the compliance spreadsheet be implemented by the process used in making previous changes, in which Energy Division staff consults with the parties and revises the spreadsheet?

2. If a different process should be used to implement any new requirements the Commission might set, please describe the preferred process.

PG&E supports the continued use of a working group process, including all stakeholders that would like to participate, to develop necessary modifications to the compliance reporting template. This includes providing notice of the Commission's intent to make changes to all parties on the RPS rulemaking service list. This process has provided for an efficient resolution of technical issues related to the spreadsheet in the past.

In general, the Commission should use any review or revision of RPS reporting requirements as an opportunity to reduce unnecessary administrative burdens by streamlining and integrating the data currently reported by retail sellers, and IOUs in particular, in several different formats. For example, IOUs currently report cost, volume, viability, and other project-specific data in their RPS Project Development Status Reports, RPS Procurement Plans, and in response to data requests related to the development of Commission reports to the Legislature or related to the development of a Commission database on IOU procurement. Many of these reports overlap or contain similar data that differs only because of inconsequential variations in the definition of required fields. The Commission should work to harmonize these reports by eliminating redundancy to the greatest extent possible and by removing unnecessary inconsistencies in the remaining fields that are redundant. PG&E recommends that changes to

the RPS compliance reporting process should not involve expanding such reports to require the same information already being reported elsewhere, unless those other reports are eliminated.

L. Section 3.9.2. – Narrative Report Elements

1. Should the Commission require retail sellers to use a uniform format for the narrative reporting elements? If so, what should such a format include?

2. How should such a format be developed (e.g., workshop, comments, informal working group with staff and parties, etc.)?

3. Should failure to provide adequate information in the narrative elements be subject to the revised RPS citation program? Why or why not? Please provide rationales that address both legal and practical implementation perspectives.

PG&E is unaware of any evidence suggesting the need for uniformity in the narrative reporting elements. If, nonetheless, the Commission decides to develop a uniform format, PG&E recommends that the format be developed through the working group established to update the RPS Compliance Report template, with the standard notice of the working group's meeting to the entire service list of the RPS proceeding.

In the absence of clear notice to retail sellers of the objectively-identifiable criteria the Commission would use to determine whether a narrative report has "adequate information," the Commission cannot issue a citation that complies with basic due process protections. Because of the subjective and narrative quality of these reporting elements, PG&E suggests that a more constructive approach to any perceived lack of adequacy in these narrative elements would be for the Commission to issue data requests to a retail seller or to require a retail seller to supplement its compliance report with additional information. A failure of the retail seller to respond to such requests or a patently willful refusal to respond in an accurate and complete manner to the requests may provide the basis for the Commission to initiate an action under the citation program.

III. CONCLUSION

PG&E appreciates the opportunity to submit comments on the Ruling and looks forward to responding the comments and proposals put forward by other parties.

Respectfully Submitted,

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By: */s/ M. Grady Mathai-Jackson*
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Dated: October 25, 2013

VERIFICATION

I, Karen Khamou, am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing **PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON COMPLIANCE AND ENFORCEMENT ISSUES IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM**, dated October 25, 2013.

The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of October 2013 at San Francisco, California.

/s/ Karen Khamou

Karen Khamou
Manager, Renewable Energy Policy and Planning
Pacific Gas and Electric Company